

Message Text

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ACTION ARA-14

INFO OCT-01 ISO-00 SOE-02 AID-05 CEA-01 CIAE-00
COME-00 DODE-00 EB-08 DOE-15 H-02 INR-10 INT-05
L-03 NSAE-00 NSC-05 OMB-01 PM-05 ICA-20 OES-07
SP-02 SS-15 STR-07 TRSE-00 ACDA-12 PA-02 /142 W
-----066494 182216Z /64

R 182018Z APR 78

FM AMEMBASSY BUENOS AIRES

TO SECSTATE WASHDC 5391

INFO AMEMBASSY LA PAZ

UNCLAS SECTION 1 OF 2 BUENOS AIRES 2947

E.O. 11652: N/A

TAGS: ENGR, AR

SUBJECT: ARGENTINE GOVERNMENT PROMULGATES RISK CONTRACT
HYDROCARBONS LAW

1. SUMMARY: AT A PRESS CONFERENCE APRIL 17, SECRETARY OF ENERGY DANIEL BRUNELLA MADE PUBLIC THE LONG AWAITED RISK CONTRACT HYDROCARBON LAW. THE LAW AUTHORIZES STATE ENTERPRISES TO CONCLUDE RISK CONTRACTS FOR THE EXPLORATION AND EXPLOITATION OF HYDROCARBONS AND PROVIDES THE CONTRACTORS WITH CERTAIN TAX AND IMPORT INCENTIVES. BRUNELLA ALSO ANNOUNCED THAT 19 AREAS TOTALING AROUND 100,000 SQUARE KILOMETERS WOULD BE PUT UP FOR BID UNDER THE LAW, BEGINNING IN THE SECOND HALF OF 1978. END SUMMARY.

2. THE LONG AWAITED RISK CONTRACT HYDROCARBON LAW (LAW 21778) WAS MADE PUBLIC APRIL 16 BY SECRETARY OF ENERGY DANIEL BRUNELLA. SUMMARIZED BELOW ARE SOME OF THE LAW'S PRINCIPAL PROVISIONS:

ARTICLE 1: STATE ENTERPRISES ARE PERMITTED TO ISSUE TENDERS AND CONCLUDE CONTRACTS FOR THE EXPLORATION AND EXPLOITATION OF HYDROCARBONS.

ARTICLE 2: THE CONTRACTORS MUST ASSUME ALL RISKS OF
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EXPLORATION AND EXPLOITATION OF HYDROCARBONS AND MUST COMMIT THEMSELVES TO BEAR ALL THE COSTS OF THE TECHNOLOGY, CAPITAL, EQUIPMENT, AND MACHINERY AND OTHER INVESTMENTS WHICH MAY BE REQUIRED FOR THE DEVELOPMENT OF THE AREA UNDER THE CONTRACT.

ARTICLE 3: THE CONTRACTORS WILL NOT ACQUIRE ANY MINERAL RIGHTS OVER THE DEPOSITS DISCOVERED IN THE

CONTRACT AREA NOR OVER THE HYDROCARBONS EXTRACTED.

ARTICLE 4: THE CONTRACTORS WILL BE PAID IN CASH PER UNIT OF PRODUCTION. ONCE THE INTERNAL NEEDS OF THE COUNTRY ARE SATISFIED AND AN ADEQUATE MARGIN OF RESERVES ARE ENSURED, THE CONTRACTORS MAY BE PAID IN KIND (E.G. OIL OR GAS).

ARTICLE 7: THE CONTRACTORS MUST INDEMNIFY OWNERS OF SURFACE AREAS WHOSE PROPERTY HAS BEEN DAMAGED BY THE CONTRACTORS' OPERATIONS.

ARTICLE 8: CONTRACTS UNDER THE LAW MUST BE OFFERED BY PUBLIC TENDER, EXCEPT IN THE CASES OUTLINED IN ARTICLE 13 (TECHNICAL/ECONOMIC OR SECURITY REASONS; PROSPECT THAT THE PUBLIC TENDER WOULD NOT PRODUCE OFFERS REQUIRED BY THE TENDER). THE CONTRACTING FIRMS MUST BE REGISTERED WITH THE STATE ENTERPRISES TO BE CONSIDERED FOR A TENDER.

ARTICLE 9, PARAGRAPH C: THE TERM FOR EXECUTING EXPLORATION CONTRACTS MAY NOT EXCEED SEVEN YEARS IN THE SEA AND FIVE YEARS ON LAND, ALTHOUGH THE PERIOD MAY BE EXTENDED FOR AN ADDITIONAL TWO YEARS TO EVALUATE ANY DISCOVERY.

ARTICLE 9, PARAGRAPH E: THE PERIOD FOR DEVELOPMENT OF PRODUCTION MAY NOT EXCEED 25 YEARS FROM THE DATE IT IS DETERMINED THAT A DEPOSIT IS COMMERCIALY EXPLOITABLE. IF THE DEPOSIT IS DISCOVERED BEFORE THE EXPLORATION TERM IS CONCLUDED, THE REMAINING PORTION OF UNUSED EXPLORATION TIME MAY BE ADDED TO THE TERM FOR DEVELOPMENT OF PRODUCTION.

ARTICLE 14: CONTRACTORS WILL BE SUBJECT TO THE GENERAL UNCLASSIFIED

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TAX LAW. WITHOUT PREJUDICE TO THIS GENERAL PRINCIPLE, CONTRACTORS MAY AMORTIZE DURING THE FIRST FISCAL EXERCISE 100 PERCENT OF THE VALUE OF AMORTIZABLE GOODS USED DURING THE EXPLORATION PHASE, AND DEDUCTING THE AMOUNT FROM PROFITS UNDER THE SAME CONTRACT.

ARTICLE 15: THE STATE ENTERPRISES MAY INCLUDE IN THE RISK CONTRACTS CLAUSES ADJUSTING THE PRICES AGREED UPON WITH THE CONTRACTORS TO OFFSET NATIONAL AND PROVINCIAL TAX CHANGES MADE AFTER THE TENDER IS ISSUED.

ARTICLE 18: PHYSICAL OR JURIDICAL PERSONS MAY DEDUCT UP TO 100 PERCENT OF FUNDS INVESTED IN SHARES OF LOCAL CONTRACTING FIRMS UNDERTAKING RISK CONTRACTS UNDER THE LAW. THE TAX EXEMPTION WILL BE VALID FOR THE FISCAL YEAR IN WHICH THE INVESTMENT WAS MADE. THE INVESTMENT MUST BE MADE FOR NOT LESS THAN THREE YEARS.

ARTICLE 19: IMPORTS OF CAPITAL GOODS, SPECIAL TOOLS OR PARTS, AND OTHER COMPONENTS TO UNDERTAKE CONTRACTS UNDER THE LAW WILL BE TOTALLY EXEMPT FROM THE PAYMENT OF IMPORT DUTIES AND TAXES, SO LONG AS SIMILAR PRODUCTS OF THE SAME QUALITY, TERM OF DELIVERY, AND REASONABLE PRICE ARE NOT PRODUCED IN ARGENTINA^{945.83 3/3.058}ONLNYUHE CONTRACT, UP TO FIVE PERCENT OF THE VALUE OF THE CAPITAL

GOODS IMPORTED.

ARTICLE23: FOREIGN INVESTMENTS FOR EXPLORATION AND EXPLOITATION OF HYDROCARBONS WILL BE EXCLUDED FROM LAW 21382 (FOREIGN INVESTMENT LAW) AND WILL BE SUBJECT TO THE RESPECTIVE TERMS OF THE CONTRACT UNDER WHICH THEY WERE MADE.

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ACTION ARA-14

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L-03 NSAE-00 NSC-05 OMB-01 PM-05 ICA-20 OES-07
SP-02 SS-15 STR-07 TRSE-00 ACDA-12 PA-02 /142 W
-----066535 182217Z /64

R 182018Z APR 78
FM AMEMBASSY BUENOS AIRES
TO SECSTATE WASHDC 5392
INFO AMEMBASSY LA PAZ

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3. BRUNELLA ALSO ANNOUNCED THAT 19 AREAS TOTALING AROUND 100,000 SQUARE KILOMETERS WOULD BE PUT UP FOR BID UNDER THE NEW LAW, BEGINNING IN THE SECOND HALF OF 1978. FIFTEEN AREAS ARE ONSHORE: 6 IN THE NORTH, AROUND SALTA; 5 IN THE CENTER-WEST AROUND NEUQUEN; AND 2 IN THE SOUTH IN SANTA CRUZ. FOUR AREAS ARE OFFSHORE: 3 SOUTH, OFF TIERRA DEL FUEGO, AND 1 IN THE COLORADO BASIN, OFF BUENOS AIRES PROVINCE.

4. COMMENT: THE NEW LAW IS A POSITIVE DEVELOPMENT WHICH SHOULD GIVE AN IMPETUS TO PETROLEUM DEVELOPMENT IN ARGENTINA BY THE PRIVATE SECTOR. ALTHOUGH LAWYERS MAINTAINED THAT THE FORMER HYDROCARBON LAW PERMITTED RISK CONTRACTS, THE GOVERNMENT WAS RELUCTANT TO ISSUE TENDERS ON THIS BASIS UNTIL A LAW SPECIFICALLY AUTHORIZING RISK CONTRACTS HAD BEEN APPROVED BY INTERESTED PARTIES IN THE ADMINISTRATION AND BY THE LEGISLATIVE ADVISORY COUNCIL (CAL). THE RECENT RISK CONTRACT FOR TIERRA DEL FUEGO AREA 1 AWARDED TO THE BRIDAS-TOTAL-DEMINEK-ARFRANCO GROUP IS AN INDICATION THAT THE RISK CONTRACT ARRANGEMENT WAS FEASIBLE UNDER THE FORMER LAW.

5. IN GENERAL, THE TAX AND IMPORT INCENTIVES ARE SEEN AS

POSITIVE DEVELOPMENTS. TRADE SOURCES APPEAR PLEASED THAT
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TAXATION OF CONTRACTORS UNDER THE LAW WILL BE SUBJECTED
TO THE GENERAL NATIONAL INCOME TAX REGIME AND THAT THERE
WILL BE SOME PROTECTION AGAINST CHANGES IN TAX LEVIES BY
BOTH NATIONAL AND LOCAL GOVERNMENTS. THEY WERE DIS-
APPOINTED, HOWEVER, IN THAT THE LAW DID NOT PROVIDE FOR
TAX LOSS CARRYOVER -- I.E., APPLICATION OF LOSSES
INCURRED DURING THE EXPLORATION PHASE TO PROFITS DURING
PRODUCTION PERIOD (ARTICLE 14).

6. IT IS TOO EARLY TO TELL JUST HOW MUCH INTEREST THERE
WILL BE FROM FOREIGN COMPANIES FOR THE 19 AREAS TO BE
TENDERED UNDER THE NEW LAW. PRELIMINARY REACTION FROM
ONE TRADE SOURCE IS THAT FOREIGN INTEREST IN ONSHORE
AREAS WILL BE MINIMAL, BUT THAT SOME FOREIGN COMPANIES WILL
BE ATTRACTED BY OFFSHORE AREAS.

7. FULL ENGLISH TEXT OF RISK CONTRACT HYDROCARBON LAW WILL
BE TRANSMITTED AS SOON AS AVAILABLE.
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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: LAW, PUBLIC DISCLOSURE, CONTRACTS, CARBON, PRESS CONFERENCES, LEGISLATIVE BILLS, FOREIGN TRADE
Control Number: n/a
Copy: SINGLE
Draft Date: 18 apr 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 jan 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978BUENOS02947
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D780166-0592
Format: TEL
From: BUENOS AIRES
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t19780447/aaaabndi.tel
Line Count: 196
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 313888ac-c288-dd11-92da-001cc4696bcc
Office: ACTION ARA
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: n/a
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 29 mar 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: N/A
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 2937736
Secure: OPEN
Status: NATIVE
Subject: ARGENTINE GOVERNMENT PROMULGATES RISK CONTRACT HYDROCARBONS LAW
TAGS: ENRG, SOPN, AR, (BRUNELLA, DANIEL)
To: STATE
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/313888ac-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014